S.B. CIVIL WRIT PETITION NO.1926/2005

Jagmal Ram & ors. Vs. State of Rajasthan & ors.

Date : 4.4.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. D.K. Gaur, for the petitioners.

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Heard learned counsel for the petitioners.

It appears that one Kheta Ram submitted a complaint on 15.11.2000 before the Tehsildar, Shiv alleging that he is khatedar of land bearing Khasra no.13 and land of Khasra no.16 is Gair Mumkin Magra. Through this land of Khasra No.16, the rainy water is flowing to the agriculture land of said complainant Kheta Ram. In the year 1980, one Choga Ram s/o Kola Ram and his sons (petitioners) obstructed the natural flow of water upon which the S.D.O., Barmer passed an order on 29.7.1981 for removal of the obstructions. However, the said Choga Ram got the land of Khasra No.16 measuring 11 biswas regularised in his name. The said complaint was processed by the Land Records Inspector, Shiv and he submitted a report before the Tehsildar, Shiv and recommended correction in the regularisation of land which was regularisation in favgour of Choga. The said file was placed before the S.D.O., Barmer who passed the order of amendment in the map so as to shift the land of said Choga Ram. The present petitioners are sons of Choga Ram and they

submitted an application before the S.D.O., Barmer and prayed that since the order has been passed without affording opportunity of hearing, therefore, the said order be set aside. The S.D.O. vide order dated 24.1.2002 rejected the said application of the petitioners. The petitioners, therefore, preferred appeal before the Additional Divisional Commissioner, Jodhpur who vide order dated 12.7.2002 set aside the order of S.D.O. dated 24.1.2002 and ex-parte order dated 5.5.2001.

According to learned counsel for the petitioners, now the land has been allotted to respondent no.3 Smt. Kiran Kanwar out of Khasra No.24. According to learned counsel for petitioners, the land of khasra no.24 is land of magra only and this fact has been taken note of by the learned Additional Divisional Commissioner, Jodhpur in the order dated 12.7.2002.

According to learned counsel for the petitioners, the land which was allotted to Kiran Kanwar or regularised in her favour will also obstruct the natural water flow and thereby the petitioners will be adversely affected. According to learned counsel for the petitioners, this aspect has not been examined by the allotting authority before allotting the land in favour of Kiran Kanwar. The petitioners have placed on record copy of jamabandi of khasra no.24 as Annex.2.

According to learned counsel for the petitioners, the

petitioners seek only the relief that the District Collector, Barmer (allotting authority) may hear the petitioners so that they may put their case before the said allotting authority and if it is feasible, then the land for the petrol pump may be shifted to the place for which the land has been allotted to Smt. Kiran Kanwar so that the water flow may not be objected.

It appears from the writ petition that the petitioners have not placed on record the allotment order of Smt. Kiran Kanwar nor the mutation order dated 21.9.2001, therefore, this Court is not in position to know the order itself by which the land was allotted to Smt. Kiran Kanwar.

Learned counsel for the petitioners submitted that the petrol pump has not been constructed and, therefore, without any prejudice being caused to Smt. Kiran Kanwar, the matter can be re-examined.

In view of the above, I deem it fit to dispose of the writ petition with a direction to the petitioners to submit a representation before the District Collector, Barmer raising their grievances within a period of one week from today and the District Collector, Barmer, after notice and opportunity of hearing to the allottee Smt. Kiran Kanwar, would examine the matter and may pass a brief order within a period of two months thereafter. The District Collector, Barmer is requested to pass the order strictly in accordance with law and Rules and to entertain the

application, if permissible under any provision of law and not treating this order as favour to the petitioners.

(PRAKASH TATIA), J.

S.Phophaliya